

GAUNTLETT & ASSOCIATES

David A. Gauntlett (SBN 96399)

James A. Lowe (SBN 214383)

18400 Von Karman, Suite 300

Irvine, California 92612

Telephone: (949) 553-1010

Facsimile: (949) 553-2050

info@gauntlettlaw.com

jal@gauntlettlaw.com

Attorneys for Defendant

360HEROS, INC.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GOPRO, INC., a Delaware corporation,

Plaintiff,

vs.

360HEROS, INC., a Delaware corporation,

Defendant.

Case No.: 3:16-cv-01944-SI

Hon. Susan Illston

**360HEROS, INC'S COUNTERCLAIM FOR
PATENT INFRINGEMENT
AND JURY DEMAND**

360Heros, Inc. alleges its Counterclaim against GoPro, Inc. as follows:

JURISDICTION, VENUE AND INTRA-DISTRICT ASSIGNMENT

1. This counterclaim of 360Heros, Inc. is brought in response to the Complaint of GoPro, Inc. in this pending lawsuit.

2. These Counterclaims arise under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.* and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

3. This Court has subject matter jurisdiction over these Counterclaims under 28 U.S.C. §§ 1331, 1338(a)-(b); and under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, and 2202.

4. This Court has personal jurisdiction over GoPro, Inc., at least because it has availed itself of the rights and privileges of this forum by appearing in and subjecting itself to jurisdiction by filing its Complaint in this judicial district.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

PARTIES

6. 360Heros, Inc. is a Delaware corporation with its principal place of business at 518 Queen Street, Olean, New York 14760. 360Heros manufactures and offers for sale virtual reality and 360-degree video solutions and related accessories worldwide, including in this judicial district.

7. 360Heros is the defendant in the Complaint brought in this case by GoPro.

8. On information and belief GoPro, Inc. is a Delaware corporation with its principal place of business at 3000 Clearview Way, San Mateo, California 94402, within this judicial district. GoPro, Inc. manufactures and offers for sale cameras, as well as related accessories and services worldwide, including in this judicial district.

BACKGROUND

360Heros' Utility Patent

9. 360Heros, Inc. is the owner of U.S. Patent No. 9,152,019 ("the '019 patent"), which, upon information and belief, GoPro, Inc. is infringing and inducing others to infringe by making, using, offering to sell, and selling in the United States, or importing into the United States, products or processes that practice one or more of the inventions claimed in the '019 patent. A copy of the

1 '019 patent is attached as **Exhibit "A."**

2 10. The '019 patent is entitled "360 Degree Camera Mount and Related Photographic and
3 Video System" and issued on October 6, 2015.

4 11. On information and belief GoPro, Inc. has profited through infringement of the '019
5 patent. As a result of GoPro, Inc.'s infringement of the '019 patent, 360Heros has suffered and will
6 continue to suffer damage. 360Heros is entitled to recover from GoPro, Inc. its damages resulting
7 from GoPro, Inc.'s infringement.

8 12. On information and belief, GoPro, Inc.'s infringement of the '019 patent is willful and
9 deliberate, entitling 360Heros to enhanced damages and reasonable attorneys fees and costs.

10 **FIRST CLAIM**
11 **INFRINGEMENT OF U.S. PATENT NO. 9,152,019**

12 13. 360Heros realleges and incorporates by reference the allegations set forth in the
13 preceding paragraphs.

14 14. 360Heros, Inc. is the owner of all right, title, and interest in the '019 patent.

15 15. GoPro has been and/or is directly infringing and/or inducing infringement of and/or
16 contributorily infringing the '019 patent by, among other things, making, using, offering to sell or
17 selling in the United States, or importing into the United States, products and/or services that are
18 covered by at least one claim of the '019 patent, including, by way of example and not limitation, the
19 Abyss and Omni rigs, and the related photographic and video systems.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, 360Heros prays for relief as follows:

22 A. For a judgment declaring that GoPro has infringed the '019 patent;

23 B. For a judgment awarding 360Heros compensatory damages as a result of GoPro's
24 infringement of the '019 patent, and in no event less than a reasonable royalty;

25 C. For a judgment awarding 360Heros pre-judgment interest, costs, and treble damages
26 under 35 U.S.C. § 284 as a result of 360Heros willful and deliberate infringement of the '019 patent;

27 D. For a judgment declaring that this case is exceptional and awarding 360Heros its
28 expenses, costs, and attorneys fees in accordance with 35 U.S.C. §§ 284 and 285;

1 E. For such other and further relief as the Court deems just and proper.
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3 Dated: August 22, 2016

GAUNTLETT & ASSOCIATES

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5 By: /s/ James A. Lowe
David A. Gauntlett
James A. Lowe
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7 Attorneys for Defendant and Counterclaimant
360HEROS, INC.
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JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, 360Heros hereby requests trial by a jury on all issues so triable.

Dated: August 22, 2016

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